

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RUBY STREETER,

Plaintiff,

v.

**OFFICE OF DOUGLAS R. BURGESS,
LLC, and DOUGLAS R. BURGESS,
ET AL.**

Defendants.

CASE NUMBER: 1:07-cv-97-WKW

**DEFENDANTS OFFICE OF DOUGLAS R. BURGESS, LLC AND DOUGLAS R.
BURGESS' MOTION FOR ORDER OF MEDIATION AND TO STAY DISCOVERY**

Defendants Office of Douglas R. Burgess, LLC and Douglas R. Burgess move this Court to order the parties to mediate this matter and to stay further discovery until such mediation is conducted. In support of this motion, Defendants state as follows.

1. On June 11, 2008, this Court entered an Order allowing the Plaintiff to conduct limited discovery relating to the personal jurisdiction of Defendants Douglas MacKinnon and Robert Van De Mark. On June 4, 2008, the Court had ordered the parties meet and confer regarding the deposition of Defendant Douglas Burgess and on June 11, 2008 the Court ordered that Plaintiff could take the deposition of Douglas Burgess in advance of answering the respective motions to dismiss that had been filed.

2. The parties did confer pursuant to the Court's earlier Order regarding the deposition of Douglas Burgess. Defendant Douglas Burgess agreed to travel to Birmingham, Alabama to be deposed and further agreed to allow the Plaintiff to take the 30(b)(6) depositions

of Defendant Law Office of Douglas Burgess, LLC at the time of his individual deposition. To date, the parties have been unable to secure a date for these depositions.¹

3. The parties are also in the process of securing a date for the telephonic deposition of Douglas MacKinnon. Plaintiff's counsel has advised Defendants' counsel that it no longer desires to take the deposition of Robert Van De Mark.

4. Moreover, since the Court's Order of June 11, 2008, Defendants made another Offer of Judgment to Plaintiff on July 7, 2008. Plaintiff rejected the Offer of Judgment on July 11, 2008.

5. On July 11, 2008, Defendants made an affirmative settlement offer to Plaintiff via email. Plaintiff made a counteroffer to Defendants on July 14, 2008. Defendants rejected Plaintiff's counteroffer, but, later that day, made a second offer to settle which was also rejected. Plaintiff's latest counteroffer is still under consideration.

6. Given the current posture of the case, Defendants believe that this case has a high likelihood of settling through mediation. Accordingly, Defendants move this Court to order the parties to mediate this case within forty-five (45) days.

7. Should this Court grant an order of mediation, Defendants request that discovery be stayed until the mediation has been conducted, including the depositions of Douglas Burgess and Douglas MacKinnon. If discovery is not stayed, Defendant Douglas Burgess must expend additional time and expense traveling to Birmingham, Alabama for a deposition, and Douglas MacKinnon must submit his time for a telephonic deposition. Not only would these events be mooted by a successful mediation, but the additional expense generated thereby would only serve to make settlement more difficult.

¹ Plaintiff's counsel unilaterally set a date for July 18, 2008 in Enterprise, Alabama for the deposition of Douglas Burgess. That deposition however cannot go forward due to scheduling conflicts.

Wherefore, Defendants respectfully requests that this Court order the parties to mediate this matter within forty-five (45) days and that discovery be stayed until the parties conduct a mediation.

Respectfully submitted,

s/ Fern H. Singer

Fern H. Singer

Stacey A. Davis

Attorneys for Defendant

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CERTIFICATE OF SERVICE

I certify that the foregoing has been served upon the following counsel of record by electronic mail on this the 16th day of July, 2008:

Gary Wyatt Stout

Michael D. Brock

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s/ Fern H. Singer

Of Counsel